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2. Democracy and Public Service

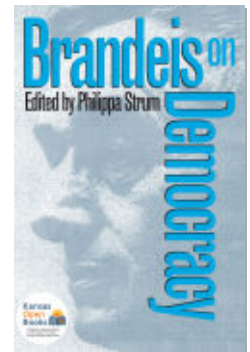
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Brandeis's ideas of democracy were expressed far more eloquently by him than the summary in the Introduction to this volume might suggest. Its elements—liberty, creative participation in political and economic life, access to education, social insurance, balanced power, the free expression of ideas—are elaborated upon in the speeches included in this chapter. As he repeated over and over again to general audiences and to groups of lawyers, democracy was impossible unless citizens possessed and acted upon a sense of civic responsibility. His personal contribution was the public service that came to occupy half of his time as a lawyer, and it can be asserted that his professional training and his idea of citizenship finally came together completely when he joined the Supreme Court. There was no democracy without public service, which is why his statements about the two are combined in this chapter.

"TRUE AMERICANISM," 1915

Brandeis was extended the honor of being asked to deliver the annual Fourth of July oration at Boston's Faneuil Hall, and in a rather ironic meeting of the anticorruption forces and the people they were fighting, he was introduced by Mayor James Michael Curley, against whom Brandeis had campaigned when Curley was an alderman (see next selection). His speech articulated the themes basic to his democratic faith, which by 1915 and his accession to the leadership of the American Zionist movement included a strong belief in cultural pluralism.

E pluribus unum, Out of many one, was the motto adopted by the founders of the Republic when they formed a union of the thirteen states. To these we have added, from time to time, thirty-five more. The

founders were convinced, as we are, that a strong nation could be built through federation. They were also convinced, as we are, that in America, under a free government, many peoples would make one nation. Throughout all these years we have admitted to our country and to citizenship immigrants from the diverse lands of Europe. We had faith that thereby we would best serve ourselves and mankind. This faith has been justified. The United States has grown great. The immigrants and their immediate descendants have proved themselves as loyal as any citizens of the country. Liberty has knit us closely together as Americans. Note the common devotion to our country's emblem expressed at the recent Flag Day celebration in New York by boys and girls representing more than twenty different nationalities warring abroad. On the nation's birthday it is customary for us to gather together for the purpose of considering how we may better serve our country. This year we are asked to address ourselves to the newcomers and to make this Fourth of July what has been termed Americanization Day.

What is Americanization? It manifests itself, in a superficial way, when the immigrant adopts the clothes, the manners and the customs generally prevailing here. Far more important is the manifestation presented when he substitutes for his mother tongue the English language as the common medium of speech. But the adoption of our language, manners and customs is only a small part of the process. To become Americanized the change wrought must be fundamental. However great his outward conformity, the immigrant is not Americanized unless his interests and affections have become deeply rooted here. And we properly demand of the immigrant even more than this. He must be brought into complete harmony with our ideals and aspirations and cooperate with us for their attainment. Only when this has been done will he possess the national consciousness of an American.

I say "he must be brought into complete harmony." But let us not forget that many a poor immigrant comes to us from distant lands, ignorant of our language, strange in tattered clothes and with jarring manners, who is already truly American in this most important sense; who has long shared our ideals and who, oppressed and persecuted abroad, has yearned for our land of liberty and for the opportunity of aiding in the realization of its aims.

What are the American ideals? They are the development of the individual for his own and the common good; the development of the individual through liberty, and the attainment of the common good through democracy and social justice.

Our form of government, as well as humanity, compels us to strive for the development of the individual man. Under universal suffrage (soon to be extended to women) every voter is a part ruler of the state. Unless the rulers have, in the main, education and character, and are free men, our great experiment in democracy must fail. It devolves upon the state, therefore, to fit its rulers for their task. It must provide not only facilities for development but the opportunity of using them. It must not only provide opportunity, it must stimulate the desire to avail of it. Thus we are compelled to insist upon the observance of what we somewhat vaguely term the American standard of living; we become necessarily our brothers' keepers.

What does this standard imply? In substance, the exercise of those rights which our Constitution guarantees, the right to life, liberty and the pursuit of happiness. Life, in this connection, means living, not existing; liberty, freedom in things industrial as well as political; happiness includes, among other things, that satisfaction which can come only through the full development and utilization of one's faculties. In order that men may live and not merely exist, in order that men may develop their faculties, they must have a reasonable income; they must have health and leisure. High wages will not meet the workers' need unless employment be regular. The best of wages will not compensate for excessively long working hours which undermine health. And working conditions may be so bad as to nullify the good effects of high wages and short hours. The essentials of American citizenship are not satisfied by supplying merely the material needs or even the wants of the worker.

Every citizen must have education, broad and continuous. This essential of citizenship is not met by an education which ends at the age of fourteen, or even at eighteen or twenty-two. Education must continue throughout life. A country cannot be governed well by rulers whose education and mental development are gained only from their attendance at the common school. Whether the education of the citizen in later years is to be given in classes or from the public platform, or is to be supplied through discussion in the lodges and the trade unions, or is to be gained from the reading of papers, periodicals and books, in any case, freshness of mind is indispensable to its attainment. And to the preservation of freshness of mind a short workday is as essential as adequate food and proper conditions of working and of living. The worker must, in other words, have leisure. But leisure does not imply idleness. It means ability to work not less but more, ability

to work at something besides breadwinning, ability to work harder while working at breadwinning, and ability to work more years at breadwinning. Leisure, so defined, is an essential of successful democracy.

Furthermore, the citizen in a successful democracy must not only have education, he must be free. Men are not free if dependent industrially upon the arbitrary will of another. Industrial liberty on the part of the worker cannot, therefore, exist if there be overweening industrial power. Some curb must be placed upon capitalistic combination. Nor will even this curb be effective unless the workers cooperate, as in trade unions. Control and cooperation are both essential to industrial liberty.

And if the American is to be fitted for his task as ruler, he must have besides education and industrial liberty also some degree of financial independence. Our existing industrial system is converting an ever increasing percentage of the population into wage-earners; and experience teaches us that a large part of these become at some time financial dependents, by reason of sickness, accident, invalidity, superannuation, unemployment or premature death of the breadwinner of the family. Contingencies like these, which are generally referred to in the individual case as misfortunes, are now recognized as ordinary incidents in the life of the wage-earner. The need of providing indemnity against financial losses from such ordinary contingencies in the workingman's life has become apparent and is already being supplied in other countries. The standard worthy to be called American implies some system of social insurance.

And since the child is the father of the man, we must bear constantly in mind that the American standard of living cannot be attained or preserved unless the child is not only well fed but well born; unless he lives under conditions wholesome morally as well as physically; unless he is given education adequate both in quantity and in character to fit him for life's work.

Such are our ideals and the standard of living we have erected for ourselves. But what is there in these ideals which is peculiarly American? Many nations seek to develop the individual man for himself and for the common good. Some are as liberty-loving as we. Some pride themselves upon institutions more democratic than our own. Still others, less conspicuous for liberty or democracy, claim to be more successful in attaining social justice. And we are not the only nation which combines love of liberty with the practice of democracy and a longing for

social justice. But there is one feature in our ideals and practices which is peculiarly American—it is inclusive brotherhood.

Other countries, while developing the individual man, have assumed that their common good would be attained only if the privileges of their citizenship should be limited practically to natives or to persons of a particular nationality. America, on the other hand, has always declared herself for equality of nationalities as well as for equality of individuals. It recognizes racial equality as an essential of full human liberty and true brotherhood, and that racial equality is the complement of democracy. America has, therefore, given like welcome to all the peoples of Europe.

Democracy rests upon two pillars: one, the principle that all men are equally entitled to life, liberty and the pursuit of happiness; and the other, the conviction that such equal opportunity will most advance civilization. Aristocracy, on the other hand, denies both these postulates. It rests upon the principle of the superman. It willingly subordinates the many to the few, and seeks to justify sacrificing the individual by insisting that civilization will be advanced by such sacrifices.

The struggles of the eighteenth and nineteenth centuries both in peace and in war were devoted largely to overcoming the aristocratic position as applied to individuals. In establishing the equal right of every person to development it became clear that equal opportunity for all involves this necessary limitation: each man may develop himself so far, but only so far, as his doing so will not interfere with the exercise of a like right by all others. Thus liberty came to mean the right to enjoy life, to acquire property, to pursue happiness in such manner and to such extent only as the exercise of the right in each is consistent with the exercise of a like right by every other of our fellow citizens. Liberty thus defined underlies twentieth-century democracy. Liberty thus defined exists in a large part of the western world. And even where this equal right of each individual has not yet been accepted as a political right, its ethical claim is gaining recognition.

America, dedicated to liberty and the brotherhood of man, rejected the aristocratic principle of the superman as applied to peoples as it rejected the principle when applied to individuals. America has believed that each race had something of peculiar value which it can contribute to the attainment of those high ideals for which it is striving. America has believed that we must not only give to the immigrant the best that we have, but must preserve for America the good that is in the immigrant and develop in him the best of which he is capable. America has believed that in differentiation, not in uniformity, lies the path of progress. It acted on this belief; it has advanced human happiness, and it has prospered.

On the other hand, the aristocratic theory as applied to peoples survived generally throughout Europe. It was there assumed by the stronger countries that the full development of one people necessarily involved its domination over another, and that only by such domination would civilization advance. Strong nationalities, assuming their own superiority, came to believe that they possessed the divine right to subject other peoples to their sway; and the belief in the existence of such a right ripened into a conviction that there was also a duty to exercise it. The Russianizing of Finland, the Prussianizing of Poland and Alsace, the Magyarizing of Croatia, the persecution of the Jews in Russia and Roumania, are the fruits of this arrogant claim of superiority; and that claim is also the underlying cause of the present war.

The movements of the last century have proved that whole peoples have individuality no less marked than that of the single person; that the individuality of a people is irrepressible, and that the misnamed internationalism which seeks the obliteration of nationalities or peoples is unattainable. The new nationalism adopted by America proclaims that each race or people, like each individual, has the right and duty to develop, and that only through such differentiated development will high civilization be attained. Not until these principles of nationalism, like those of democracy, are generally accepted will liberty be fully attained and minorities be secure in their rights. Not until then can the foundation be laid for a lasting peace among the nations.

The world longs for an end of this war, and even more for a peace that will endure. It turns anxiously to the United States, the one great neutral country, and bids us point the way. And may we not answer: Go the way of liberty and justice, led by democracy and the new nationalism. Without these, international congresses and supreme courts will prove vain and disarmament "The Great Illusion."

And let us remember the poor parson of whom Chaucer says:

"But Criste's loore, and his Apostles twelve,
He taughte, but first he followed it hymselfe."

SPEECH TO THE GOOD GOVERNMENT ASSOCIATION,
1903

Brandeis's sense of civic responsibility led him to lecture before and join a multiplicity of civic organizations. During his years in Boston he

was a founder, cofounder, or active participant in groups such as the Election Laws League, the Public Franchise League, the Good Government Association and its Aldermanic Association, the Municipal Transportation League, the Savings Bank Insurance League, the Industrial League, the Advisory Committee of the National Municipal League's Municipal Taxation Committee, the Civic Federation of New England, the National Committee of Economic Clubs, and the People's Lobby. A particular concern was citizen responsibility which, among other things, was necessary if the corruption that seemed endemic to Boston and the Massachusetts legislature was to be eliminated. Unfortunately, citizen participation did not always achieve desirable results: Curley won his race for alderman in spite of his conviction for defrauding the government.

You are gathered together not as businessmen, but as citizens of Boston . . . as men of honor, you cannot submit meekly to be represented and to be governed by men criminal or inefficient. As men of honor, you cannot without a struggle permit the City of Boston, around which cluster the noblest and most sacred memories of American history,—the City of Boston which you love, and whose fair name and welfare are now entrusted to your care, to be disgraced by the election to high office of men whose criminal practices are not only known but have been established after full hearing by legally constituted tribunals.

Think of the effrontery of this man [James M.] Curley—standing before the people of Boston as the nominee of a great political party within three months of the day when he was convicted by a jury of the crime of conspiracy to defraud the government of the United States.

The waste and theft of public monies which result from having such men in office is bad enough; but a hundred times worse is the demoralization of our people which results. Nothing breeds faster than corruption. Every criminal in the public service is a plague spot spreading contagion on every hand. Think what a heritage we shall leave to your children if corruption is allowed to stalk about unstayed. The ships which carry the products of our rich country to other lands come back freighted with thousands of men and women and children who, fleeing from the oppression or the hopelessness of their old homes, seek this as the land of liberty and of opportunity. Shall we permit these, our fellow-citizens—perhaps our future rulers—to be taught that in Boston liberty means license to loot the public treasury—that in Boston oppor-

tunity means the chance for graft . . . You must have good government because it is a disgrace in a free country to submit to the government of the bad; and if you do strive,—strive earnestly, persistently—you will not fail.

ADDRESS TO THE NEW ENGLAND CIVIC FEDERATION,
1906

Because it was impossible to maintain a democracy without an educated electorate, Brandeis argued that education had to continue long after formal schooling had ended. His interest in education would lead him to undertake a major effort in the 1920s and 1930s to build up the University of Louisville, to which he eventually left the bulk of his papers, and to applaud the establishment of the Hebrew University as a major step in the development of the Jewish homeland in Palestine. But he was equally concerned with citizens who did not have access to a university education as well as with the continuing education, long after college, of those who did. His interest in the need for leisure time during which to educate oneself and his fear that governmental corruption was inevitable if citizens were not educated became themes that he would articulate repeatedly.

The educational standard required for a democracy is obviously high. The citizen should be able to comprehend, among other things, the many great and difficult problems of industry, commerce, and finance, which with us necessarily become political questions. He must learn about men as well as things. In this way can the commonwealth be saved from the pitfalls of financial schemers on the one hand and ambitious demagogues on the other.

But for the attainment of such an education, such mental development, it is essential that the education shall be continuous throughout life, and an essential condition of such continuous education is free time; that is, leisure; and leisure does not merely imply time for rest, but free time when body and mind are sufficiently fresh to permit of mental effort.

"EFFICIENCY AND SOCIAL IDEAS," 1914

Although this selection might well have been included in the section on labor, it is included here as an indication of the way Brandeis defined democracy to apply to the economic as well as to the political

sphere. The work place was yet another area in which to attain the goals of democracy: liberty, justice, and fulfillment of the individual.

Efficiency is the hope of democracy. Efficiency means greater production with less effort and at less cost, through the elimination of unnecessary waste, human and material. How else can we hope to attain our social ideals?

The "right to life" guaranteed by our Constitution is now being interpreted according to demands of social justice and of democracy as the right to live, and not merely to exist. In order to live men must have the opportunity of developing their faculties; and they must live under conditions in which their faculties may develop naturally and healthily.

In the first place, there must be abolition of child labor, shorter hours of labor, and regular days of rest, so that men and women may conserve health, may fit themselves to be citizens of a free country, and may perform their duties as citizens. In other words, men and women must have leisure, which the Athenians called "freedom" of liberty. In the second place, the earnings of men and women must be greater, so that they may live under conditions conducive to health and to mental and moral development.

Our American ideals cannot be attained unless an end is put to the misery due to poverty.

These demands for shorter working time, for higher earnings and for better conditions cannot conceivably be met unless the productivity of man is increased. No mere redistribution of the profits of industry could greatly improve the condition of the working classes. Indeed, the principal gain that can be expected from any such redistribution of profits is that it may remove the existing sense of injustice and discontent, which are the greatest obstacles to efficiency.

LETTER TO ROBERT W. BRUERE, FEBRUARY 25, 1922

After Brandeis spoke informally to a group connected with the Department of Research and Education of the Federal Council of Churches in America, Robert Bruere, who had organized the meeting, asked the justice to put his thoughts in writing. It is a cogent statement about democracy, individual responsibility, human dignity, experimentation,

the collection of facts, and eventual ownership of businesses by workers. Brandeis's first biographer called the letter a statement of Brandeis's "creed."

Refuse to accept as inevitable any evil in business (e.g., irregularity of employment). Refuse to tolerate any immoral practice (e.g., espionage). But do not believe that you can find a universal remedy for evil conditions or immoral practices in effecting a fundamental change in society (as by State Socialism). And do not pin too much faith in legislation. Remedial institutions are apt to fall under the control of the enemy and to become instruments of oppression.

Seek for betterment within the broad lines of existing institutions. Do so by attacking evil in situ; and proceed from the individual to the general. Remember that progress is necessarily slow; that remedies are necessarily tentative; that because of varying conditions there must be much and constant inquiry into facts . . . and much experimentation; and that always and everywhere the intellectual, moral, and spiritual development of those concerned will remain an essential—and the main factor—in real betterment.

This development of the individual is, thus, both a necessary means and the end sought. For our objective is the making of men and women who shall be free, self-respecting members of a democracy—and who shall be worthy of respect. Improvement in material conditions of the worker and ease are the incidents of better conditions—valuable mainly as they may ever increase opportunities for development.

The great developer is responsibility. Hence no remedy can be hopeful which does not devolve upon the workers participation in responsibility for the conduct of business; and their aim should be the eventual assumption of full responsibility—as in co-operative enterprises. This participation in and eventual control of industry is likewise an essential of obtaining justice in distributing the fruits of industry.

But democracy in any sphere is a serious undertaking. It substitutes self-restraint for external restraint. It is more difficult to maintain than to achieve. It demands continuous sacrifice by the individual and more exigent obedience to the moral law than any other form of government. Success in any democratic undertaking must proceed from the individual. It is possible only where the process of perfecting the individual is pursued. His development is attained mainly in the processes of com-

mon living. Hence the industrial struggle is essentially an affair of the church and its imperative task.

PUBLIC SERVICE: TWO INTERVIEWS

Brandeis's devotion to public service became legendary. To him, it was a logical extension of civic responsibility, but the oddity of a well-known attorney devoting himself to the public good (see next chapter) led to his being queried about it repeatedly. His participation in public life was never half-hearted. As soon as he became interested in a cause, he learned everything he could about it and began generating a stream of mail urging everyone he could think of to join him and to spread the word. He corresponded regularly with newspapers and journals, sending them letters to the editor and exhortations to print articles about the matters he deemed important.

Interview with American Cloak and Suit Review, 1911

Some men buy diamonds and rare works of art, others delight in automobiles and yachts. My luxury is to invest my surplus effort, beyond that required for the proper support of my family, to the pleasure of taking up a problem and solving, or helping to solve it, for the people without receiving any compensation. Your yachtsman or automobilist would lose much of his enjoyment if he were obliged to do for pay what he is doing for the love of the thing itself. So I should lose much of my satisfaction if I were paid in connection with public services of this kind.

Interview in the New York Times Annalist, 1913

"Think of the great work that has been done in the world by men who had no thought of money reward. No; money is not worth a great man's time. It is unworthy of greatness to strive for that alone. What then? Power? That isn't much better, if you mean the kind of power that springs from money. Is it the game? You hear that now-a-days—the game! It sounds too frivolous. To me the word is Service. Money-making will become incidental to Service. The man of the future will think more of giving Service than of making money, no matter what particular kind of Service it happens to be. It will become a distinction worth striving for to give the best Service, whether you are conducting a retail

shop or a great railroad. It naturally follows that those who give the best Service will make money, because success must be profitable, yet Service, and not money-making, will be the end. Though the work of the greatest artists may command the highest prices, their incentive has not been money. It has been the desire to achieve professional success. That will be the spirit of business in the future . . ."

"How came you by your democracy? You were not bred to it?" "No; my early associations were such as to give me greater reverence than I now have for the things that are because they are. I recall that when I began to practice law I thought it awkward, stupid, and vulgar that a jury of twelve inexpert men should have the power to decide. I had the greatest respect for the Judge. I trusted only expert opinion. Experience of life has made me democratic. I began to see that many things sanctioned by expert opinion and denounced by popular opinion were wrong."

"THE GREATEST LIFE INSURANCE WRONG," 1906

Brandeis's grasp of the public interest problems he investigated is typified by this article about the unfairness of the life insurance offered to workers by large companies and the reasons for his belief that savings bank living insurance [SBLI] would remedy them. He was effective in dealing with matters affecting the public because he could see and explain not only why the issue was of public importance and exactly how the current system worked but all the possible alternatives and their probable consequences. His understanding of the mechanics of different arenas of life enabled him, as here, to create truly innovative solutions. The great effort he put into having his proposals implemented became an example of the integration of the political and educational. He firmly believed that if he had found correct solutions and explained and publicized them sufficiently, they would garner public support. That is why he inundated potential supporters with letters, sent numerous letters to the editors of widely read newspapers, lectured to civic groups himself and urged others to emulate him. His "propaganda" would teach citizens where to throw their political weight. Education was the key to democracy; facts were the basis for understanding the problems faced by a democratic state at any given moment; citizen participation was the method by which the wisest possible pub-

lic policy would be attained. Brandeis himself was the strongest weapon in his democratic arsenal.

Nearly three-fourths of all level premium life insurance policies issued are of this character [workman's life insurance]. On December 31, 1905 . . . there were 16,872,583 industrial policies outstanding in the United States. In New York alone their number was then 3,898,810, and . . . an average of 67,200 such policies were being issued in that state every month.

Industrial insurance, the workingman's life insurance, is simply life insurance in small amounts, on which the premiums are collected weekly at the homes of the insured. It includes both adult and child insurance. The regular premium charge for such insurance is about double that charged by the Equitable, the New York Life, or the Mutual Life of New York, for ordinary life insurance. In the initial period of the industrial policy, the premium rate rises to eight times that paid for ordinary insurance, since, by a clause which will be found in most industrial policies, it is provided that, if death occurs within the first six months after the date of the policy, only one-fourth of the face of the policy will be paid, and if death occurs within the second six months, payment will be made of only one-half. So heavy are the burdens cast upon those least able to bear them.

The disastrous result to the policy-holder of this system of life insurance may be illustrated from the following data, drawn from Massachusetts official reports:

In the fifteen years ending December 31, 1905, the workingmen of Massachusetts paid to the so-called industrial life insurance companies an aggregate of \$61,294,887 in premiums, and received back in death benefits, endowments, or surrender values an aggregate of only \$21,819,606. The insurance reserve arising from these premiums still held by the insurance companies does not exceed \$9,838,000. It thus appears that, in addition to interest on invested funds, about one-half of the amounts paid by the workingmen in premiums has been absorbed in the expense of conducting the business and in dividends to the stockholders of the insurance companies.

If this \$61,294,887, instead of being paid to the insurance companies, had been deposited in Massachusetts savings banks, and the depositors had withdrawn from the banks an amount equal to the aggregate of \$21,819,606 which they received from the insurance companies during

the fifteen years, the balance remaining in the savings banks December 31, 1905, with the accumulated interest, would have amounted to \$49,931,548.35—and this, although the savings banks would have been obliged to pay upon these increased deposits in taxes to the Commonwealth more than four times the amount which was actually paid by the insurance companies on account of the insurance.

Perhaps the appalling sacrifice of workingmen's savings through this system of insurance can be made more clear by the following illustration:

The average expectancy of life in the United States of a man 21 years old is, according to Meech's Table of Mortality, 40.25 years. In other words, take any large number of men who are 21 years old, and the average age which they will reach is 61 1/4 years.

If a man, beginning with his 21st birthday, pays throughout life 50 cents a week into Massachusetts savings banks and allows these deposits to accumulate for his family, the survivors will, in case of his death at this average age of 61 1/4 years, inherit \$2,265.90 if an interest rate of 3 1/2 per cent a year is maintained.

If this same man should, beginning at the age of 21, pay throughout his life 50 cents a week to the Prudential Insurance Company as premiums on a so-called "industrial" life policy for the benefit of his family, the survivors would be legally entitled to receive, upon his death at the age of 61 1/4 years, only \$820.

If this same man, having made his weekly deposit in a savings bank for 20 years, should then conclude to discontinue his weekly payments and withdraw the money for his own benefit, he would receive \$746.20. If, on the other hand, having made for 20 years such weekly payments to the Prudential Insurance Company, he should then conclude to discontinue payments and surrender his policy, he would be legally entitled to receive only \$165.

So widely different is the probable result to the workingman if he selects the one or the other of the two classes of savings investment which are open to him; and yet life insurance is but a method of saving. The savings banks manage the aggregate funds made up of many small deposits until such time as they shall be demanded by the depositor; the insurance company manages them ordinarily until the depositor's death. The savings bank pays back to the depositor his deposit with interest less the necessary expense of management. The insurance company in theory does the same, the difference being merely that the savings bank undertakes to repay to each individual depositor the whole of

his deposit with interest; while the insurance company undertakes to pay to each member of a class the average amount (regarding the chances of life and death), so that those who do not reach the average age get more than they have deposited (including interest) and those who exceed the average age less than they have deposited (including interest).

It is obvious that the community should not and will not long tolerate such a sacrifice of the workingmen's savings as the present system of industrial insurance entails; for the causes of this sacrifice are easily determined and a remedy lies near.

The extraordinary wastefulness of the present system of industrial insurance is due in large part to the fact that the business, whether conducted by stock or by mutual companies, is carried on for the benefit of others than the policy-holders. The needs and financial inexperience of the wage-earner are exploited for the benefit of stockholders or officials. The Prudential (which was the first American company to engage in the business) pays annual dividends to its stockholders equivalent to more than 219 per cent upon the capital actually paid in; the Metropolitan dividends are equivalent to 28 per cent of such capital; and stock in the Columbian National Life Insurance Company, a corporation which commenced business but four years ago, has risen from par to \$296.

But the excessive amounts paid in dividends or in salaries to the favored officials account directly for only a small part of the terrible shrinkage of the workingmen's savings. The main cause of waste lies in the huge expense of soliciting insurance, taken in connection with the large percentage of lapses, and in the heavy expenses incident to a weekly collection of premiums at the homes of the insured. The commission of the insurance solicitor is from ten to twenty times the amount of the first premium. The cost of collecting the premiums varies from one-fifth to one-sixth of the amount collected. And yet commissions for soliciting and collection are only a part of the expenses. The physician's fee, the cost of supervision, of accounting and of advertising, must all be added; with the result that no industrial policy "pays its way" until it has been in force about three years. In other words, if the policy lapses before it has been in force three years, not only does the policy-holder lose (except the temporary protection) all that he has paid in, but the company (that is the persisting policy-holders) bears a part—generally the larger part—of the cost of the lapsed policy.

And only a small percentage of industrial policies survive the third

year. A majority of the policies lapse within the first year. In 1905, the average payments on a policy in the Metropolitan so lapsing continued little more than six weeks. The aggregate number of such lapses in a single year reaches huge figures. In 1905, 1,253,635 Metropolitan and 951,704 Prudential policies lapsed. The experience of their young and energetic rival, the Columbian National Life Insurance Company, is even more striking. On January 1, 1905, that company had outstanding 40,397 industrial policies. It wrote, during the year, 103,466. At the end of the year it had outstanding only 63,497; and yet, of the 143,863 policyholders, only 699 had died, while 79,677 policies—that is, one hundred and fourteen times as many—had lapsed . . . It is obvious that a remedy cannot come from men holding such views—from men who refuse to recognize that the best method of increasing the demand for life insurance is not eloquent persistent persuasion, but to furnish a good article at a low price. A remedy can be provided only by some institution which will proceed upon the principle that its function is to supply insurance upon proper terms to those who want it and can carry it, and not to induce working people to take insurance regardless of their real interests. To attain satisfactory results the change of system must be radical.

The savings banks established on the plan prevailing in New York and generally through the New England states are managed upon principles and under conditions upon which alone a satisfactory system of life insurance for working men can be established. These savings banks have no stockholders, being operated solely for the benefit of the depositors. They are managed by trustees, usually men of large business experience and high character, who serve without pay, recognizing that the business of collecting and investing the savings of persons of small means is a quasi-public trust, which should be conducted as a beneficent, and not as a money-making institution. The trustees, the officers, and the employees of the savings banks have been trained in the administration of these savings to the practice of the strictest economy. While the expenses of managing the industrial departments of the Metropolitan, the Prudential and the John Hancock companies have, excluding taxes, exceeded 40 per cent of the year's premiums, the expense of management in 1905 (exclusive of taxes on surplus) of the 130 New York Savings banks, holding \$1,292,358,866 of deposits, was only 0.28 of 1 per cent of the average assets, or 1 per cent of the year's deposits; and the \$662,000,000 of deposits held in 1905 in the 189 Massa-

chusetts savings banks were managed at an expense of 0.23 of 1 per cent of the average assets, or 1.36 per cent of the year's deposits.

Savings institutions so managed offer adequate means of providing insurance to the working man. With a slight enlargement of their powers, these savings banks can, at a minimum of expense, fill the great need of cheaper life insurance in small amounts. The only proper elements of the industrial insurance business not common to the savings bank business are simple, and can be supplied at a minimum of expense in connection with such existing savings banks. They are:

First—Fixing the terms on which insurance shall be given.

Second—The initial medical examination.

Third—Verifying the proof of death.

The first is the work of an insurance actuary; and the present cost of actuarial service can be greatly reduced both by limiting the forms of insurance policies to two or three standard forms of policy to be uniform throughout the state, and by providing for the appointment of a state actuary who, in connection with the insurance commissioner, shall serve all the savings insurance banks.

The initial medical examination and the verification of proof of death are services that may be readily performed for the savings banks at no greater pro rata expense than for the existing insurance companies.

The insurance department of the savings banks would, of course, be kept entirely distinct as a matter of accounting from the savings department; but it would be conducted with the same plant and the same officials, without any large increase of clerical force or incidental expense, except such as would be required if the deposits of the bank were increased. On the other hand, the insurance department of savings banks would open with an extensive and potent good-will, and under the most favorable conditions for teaching the value of life insurance—a lesson easily learned when insurance is offered at about half the premium exacted by the industrial companies. With an insurance clientele composed largely of thrifty savings banks depositors, the expensive house-to-house collection of premiums could be dispensed with, and more economical payments of premiums could probably be substituted for weekly payments. Indeed, it is probable that the following simple, convenient, and inexpensive method of paying premiums would, to a large extent, be adopted, namely, making deposits in the savings de-

partment from time to time, and giving, when the policy is issued, a standing order to draw on the savings fund in favor of the insurance fund to meet the premium payments as they accrue.

The safety of savings banks, would, of course, be in no way imperiled by extending their functions to life insurance. Life insurance rests upon substantial certainty, differing in this respect radically from fire, accident, and other kinds of insurance. Since practical experience has given to the world the mortality tables upon which life insurance premiums rest and the reserves for future needs are calculated, no life insurance company has ever failed which complied with the law governing the calculation, maintenance, and investment of the legal reserve. The causes of failure of life insurance companies have been excessive expense, unsound investment, or dishonest management. From these abuses our savings banks have been practically free, and that freedom affords strong reason for utilizing them as the urgent need arises to supply the kindred service of life insurance.

THE QUESTION OF LAND USE

Brandeis's representation of Collier's Weekly during the Pinchot-Balinger hearings before Congress (see chapter 1) led him to think about the policies that would best govern land use and prevent private exploitation of Alaska's natural resources. He read widely on the subject and became convinced that public ownership ought to be combined with private use. Public ownership would prevent private monopoly; private use would prevent the evils of public monopoly. Power would be distributed and thereby kept in balance. He wrote extensively on the subject to Robert M. La Follette, his ally in the hearings, in the hope that La Follette would be able to use his position in the Senate to get some of the ideas enacted into law. Brandeis's letter to Amos Pinchot, another ally, elaborated upon his thinking.

Letter to Alice Brandeis, July 28, 1911

I have a book in & am sure there is only one solution for Alaska. A most comprehensive plan of Govt. ownership, Railroads, Utilities—with leasing only of most lands, & then a complete separation of the industrial property state from the political state. Control the property of the

people of the U.S. from Washington & give the inhabitants of Alaska otherwise home rule.

Letter to Robert M. La Follette, July 29, 1911

This, very roughly, is my idea of the Alaska situation.

We know the territory is vastly rich. First it was fisheries; then gold; then copper began to promise even more than gold; and finally the value of the coal fields was recognized. Other wealth may be discovered at any time, for the possibilities are far vaster than thus far known . . .

The wealth of Alaska remains the property of the people of the United States with but slight exceptions . . . mainly on account of its inaccessibility and the difficulties and cost of the necessary development. The wealth is so great and the temptation so great to secure it that we are finding it impossible to protect it from depredations . . .

The people of the United States are entitled to begin to get the benefit and the comfort of a reduction in the cost of living which will come from the utilization of Alaska's treasures, and the few people who have gone to Alaska are entitled to exercise to the full the opportunities which their own courage and self sacrifice ought to open to them. All the wealth is of no good, without development, and the first step in the development is an adequate system of transportation. They need railroads, and they will need much else in the way of public utilities. The demand is so great for these facilities, and so well founded, that the people are becoming willing to pay for them . . . Development of transportation and other facilities by the capitalists would, in a way, seriously impair development, because to give them a return which would seem to them adequate would entail rates which would be oppressive to the people of Alaska, and would, in themselves, tend to retard development and the opening up of opportunities to the sturdy, courageous men who are willing to take up their residence in the territory. To preserve the territory it is essential that the capital required in order to furnish the facilities for development, that is capital to supply the public utilities, should be furnished by the people of the United States, whose property the territory is, and in whose interests its resources should be primarily conserved. The people of the United States can wait for their return. They do not require an immediate return by way of interest on their investment. The money raised by the people can be raised at less than three per cent interest. The charges entailed by such an investment of the people are small. Rates for transportation and for the sup-

plying of other public utilities may properly be low when the capital cost is as small as the cost of the investment would be to the people

... The control of the transportation system by the Morgan-Guggenheims, or any other capitalists, would be attended by conditions certain to subject to the control of the owners of the transportation system a large part of the property of Alaska dependent upon these transportation systems. We should have, in the most aggravated form, a control in the same hands of the means of transportation and the commodities to be transported. There would be a gradual tendency to crush out all of the independent operators along the line of transportation, just as there has been along the coal carrying roads in the states . . . The temptation of the capitalistic ownership to secure the property would prove irresistible, and we would have in the most aggravated form the system of discrimination and rebates and corruption which have characterized the worst period of our railroad operation. No protection could be expected from local officials appointed for that purpose, because in their positions they would prove helpless against the pressure and power of the capitalists.

The essential thing, therefore, is to provide through the general government those facilities essential to the development of the country . . . We must devise some system by which those who are willing to go to Alaska, with a view to working there and developing its resources, shall have not only the assurance of fair treatment, but the opportunity of operating without undue oppression through monopolistically inclined competitors . . . In other words, the people of the United States and the settlers of Alaska should get the increment in value which they earn, through their investment and their own labor, and the sacrifices attendant upon settling in a new country . . .

It seems to me that the government . . . should now acquire all of the railroads in Alaska . . . that it should similarly provide for the development through the government of the other public utilities, as it has of the telegraph and the telephone; and that it should adopt systems of land tenure which should not only reserve in the government the title to the coal lands, but also to the other mining properties . . . On the other hand, the government should be extremely liberal in the terms which it gives to those who use the property. Only an extremely small return, at least for a long period in the future should be required . . .

As an incident of supplying facilities to the people of Alaska for their operation, it may be necessary in the first instance for the government

to operate the coal mines. If it does so, operation should be merely for the purpose of quickly providing coal at reasonable prices, and in no sense with the idea of the government mining any appreciable part of the coal mines of Alaska. But government ownership of a mine there would always be valuable as a regulator, and particularly valuable as an experiment station to instruct the government as to the conditions and terms upon which the vast coal fields should be leased . . .

In such a development of Alaska, Alaskan interests would clearly divide themselves into two classes: First, the Alaskan resources which are the property of the people of the United States. These should be primarily administered for the benefit of the hundred million and countless more who will be the inhabitants of the United States, and not primarily for those who may chance to settle in Alaska . . . Our obligation to the Alaskans is to give them, and to all newcomers liberal and equal opportunities, to make what their brains and character entitle them to. Consequently, preserving the resources for the people of the United States to whom they belong, we should administer them through representatives of the general government . . . On the other hand, matters dealing with social and political conditions of the Alaskans ought to be determined by the Alaskans themselves. They should have in the highest degree, home rule . . . once we remove the temptations incident to the possibility of grabbing the Alaskan wealth, there is no reason why the officials of Alaska should not prove as loyal and honest as officials elsewhere.

Letter to Robert M. La Follette, July 31, 1911

How would this do for the Progressive slogan:

"Alaska; the Land of Opportunity.
Develop it by the People, for the people.
Do not let it be exploited by the Capitalists,
for the Capitalists."

Letter to Amos Pinchot, August 2, 1911

(B.) As to Mineral Lands: I am confirmed in the belief that the plan of leasing ought not to be confined to coal, but to extend, with of course great variations, to all mineral lands.

(C.) Other Lands: Some plan should be worked out by which the fee simple title to practically all other lands is retained by the Govern-

ment. There is no propriety in making the land a subject for speculation. The settler upon it, whether the land be town or country land, should be given the most favorable terms. We ought to be able to devise some system which will make profitable and encourage the use, and prevent the land itself becoming the subject of speculation . . .

(D.) Other public works: The development by the Government should include, I think, all public utilities. It is highly probable that such public utilities as are strictly local, like tramways or electric light and water ought to be matters for local as distinguished from general government.